IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8214 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHOBHANABEN NATVARLAL RACHH & 1 - Petitioner(s)
Versus
VERAVAL PEOPLE'S CO-OP. BANK LTD & 1 - Respondent(s)

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Appearance :

MR MEHUL S SHAH for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3 - 2.MR SURESH M SHAH for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3 - 2.
MR RM CHHAYA for Respondent(s) : 1,
None for Respondent(s) : 2,
MS TEJAL K SHAH for Respondent(s) : 2.2.1

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/10/2006

ORAL JUDGMENT

1. The petitioners herein challenge a decree passed by the Board of Nominees on 30-6-1998 as upheld by a decision dated 31-8-1990 passed by the

Cooperative Tribunal.

2. The partnership firm, had present petitioners as its partners, borrowed a sum of Rs. 50,000/- from respondent no.1-bank with a promise to repay the same with interest at the rate of 18%. It is not in dispute that such sum was not repaid. The bank therefore, instituted Lavad Suit against the partnership firm and the petitioners herein as partners of the firm. Upon issuance of summons, petitioner no.2 gave an application on 11-3-1987 to the Board of Nominees stating that the partnership firm has been dissolved and he therefore, needs time to file reply. After 11-3-1987, neither of the petitioners remained present before the Board of Nominees though several adjournments were granted. Eventually, Board of Nominees passed an ex-parte decree against the partnership firm and the petitioners. These petitioners therefore, preferred an appeal before the Cooperative Tribunal. The Tribunal by impugned judgement dated 31-8-1990 rejected the appeal.

3. The main contention of the petitioners is that after application for adjournment was given on 11-3-1987, the Board of Nominees did not communicate to them the next date of hearing. It is further contended that the partnership firm was dissolved by a deed dated 16-2-1983. It is contended that subsequently a new partnership firm came into existence and in the dissolution deed both the petitioners were absolved of their liability to discharge the debts due to the partnership firm and the third partner one Shri Tribhovandas Monji Raithattha had agreed to undertake all the liabilities of the partnership firm. It is additionally contended that the partnership firm was not a member of the respondent no.1-bank and therefore, Lavad Suit under Section 96 of the Gujarat Cooperative Societies Act could not have been filed.

4. Learned advocate Shri Shah for the petitioners submitted that the petitioners were never communicated the date of hearing by the Board of

Nominees and that therefore, the petitioners could not participate in the proceedings.

4.1 He further submitted that the partnership firm had been dissolved and intimation thereof was given to the bank subsequently. The respondent no.1 bank in fact had dealings with the new partnership firm. He submitted that the third partner Shri Tribhovandas Monji Raithattha had undertaken all the liabilities of the partnership firm. He submitted that the Board of Nominees recorded the evidence in printed form and passed the order also in printed form. Considering the totality of the facts, therefore, the petitioners were not liable to discharge the debts due to partnership firm. He further submitted that the bank claimed principal amount with 18% interest and also added an additional 2% for which there was simply no justification.

5. Learned advocate Shri Chhaya for respondent no.1 bank opposed the petition and submitted that the

petitioners had not participated before the Board of Nominees; that no reply was filed in response to the summons served. He further pointed out that in appeal memo also, these petitioners have not take some of the contentions which are being pressed before this Court.

6. Having heard learned advocates appearing for the parties, I find that though petitioner no.2 had given an application for adjournment before the Board of Nominees on 11-3-1987, on several adjournments, petitioners had not remained before the Board of Nominees. Eventually, after many adjournments, the Board of Nominees passed final decree only on 30-6-1998. For full one year and three months, these petitioners took no steps to inquire into the progress in the suit. Their contention therefore, that they were not aware about further proceedings cannot be believed. No provision is pointed out to suggest that the litigants were required to be informed about the next date of adjournments

continuously. Even otherwise the time gap between the application for adjournment and final decree was so long that the petitioners cannot take shelter of ignorance of the proceedings.

7. The petitioners were admittedly the partners in the partnership firm which had taken loan from the bank. Subsequent dissolution in my view would not absolve the petitioners from their liabilities already incurred. Internal arrangement between the petitioners and third partner cannot be enforced against the bank to prevent the bank from seeking recovery against the partners. Reliance placed on Sub-section(2) of Section 32 of Indian Partnership Act would not be available to the petitioners since it is not the case of retirement of partners but of dissolution of firm. The fact that firm was under dissolution is virtually undisputed. The petitioners have described the arrangement as dissolution of firm and the deed produced on record also clearly witnesses this occurrence.

Section 45 of the Indian Partnership Act also would not be useful to the petitioners since same applies to a different situation whereby further debt is created by a partner even after dissolution of the firm. In this view of the matter, the petitioners have virtually no defence. They have produced no documents before the Board of Nominees nor even filed reply. Before the Tribunal though some documents were sought to be placed on record, even after taking such documents into account, the petitioners cannot escape the liability of discharging their duties of the partnership firm.

8. Considering all these aspects of the matter I see no useful purpose in remanding the proceedings for fresh adjudication.

9. I have perused the appeal memo presented before the Tribunal. No contention has been raised even in appeal memo that partnership firm was not a member of the firm and that therefore, Lavad Suit under section 96 of the Gujarat Cooperative

Societies Act was not maintainable.

10. Though the Board of Nominees did record evidence in printed form and passed its final order also in printed format, that by itself would not permit this Court to interfere in exercise of powers under Article 226 of the Constitution of India in facts of the present case. However, learned advocate for the petitioners was justified in pointing out that respondent no.1-bank had not laid any foundation for charging 2% additional interest. To that extent, decree is required to be and is hereby modified qua the petitioners alone since the partnership firm or the other partners have not challenged the decree in this petition.

11. In the result, the petition is partially allowed. The decree of the Board of Nominees as upheld by the Cooperative Tribunal which is under challenge, shall be modified to the extent of reducing the decreetal amount by charging 18% interest and quashing charging further 2%

interest if so done while calculating the decreetal amount. Decree will be drawn accordingly. Rule made absolute to the above limited extent with no order as to costs.

(Akil Kureshi, J.)

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